

State of California  
Regional Water Quality Control Board  
North Coast Region

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August 27, 2002

EXECUTIVE OFFICER'S SUMMARY REPORT  
9:00 a.m., September 26, 2002  
North Coast Regional Water Board Hearing Room  
5550 Skylane Boulevard, Suite A  
Santa Rosa, California

ITEM:

SUBJECT: Public Hearing to Receive Comments on Proposed Categorical Waiver  
Descriptions and Conditions for Timber Harvest Operations

### **Introduction**

This hearing is being conducted in compliance with the provisions of California Water Code (CWC) Section 13269, for the purpose of reviewing the existing categorical waiver of waste discharge requirements for timber harvesting issued by the North Coast Regional Water Quality Control Board (Regional Water Board) and to receive comments on alternative proposals for waiving waste discharge requirements for timber harvest operations. Only the timber harvesting waiver category contained in Resolution No. 87-113 is being reviewed at this public hearing.

The staff proposals in this report are not intended to serve as final recommendations for Regional Water Board action. Rather, they are presented as preliminary proposals and serve as a basis for the development of alternative procedures for waiving waste discharge requirements for timber harvest operations.

Although the Regional Water Board will receive public testimony on the scope of possible regulatory and policy actions, it will not take action to adopt an updated categorical waiver of waste discharge requirements for timber harvesting at this public hearing. A public hearing to consider the adoption of a waiver policy for timber harvest operations will be scheduled for a future date.

### **Background**

CWC Section 13260 requires that any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate regional water

board a report of waste discharge, containing the information which may be required by the regional water board.

CWC Section 13264 authorizes regional water boards to prescribe waste discharge requirements.

CWC Section 13269 authorizes regional water boards to waive reports of waste discharge and waste discharge requirements if the waiver is not against the public interest.

CWC Section 13269 was amended in 1999 by Senate Bill (SB) 390. The amendments:

- Require regional water boards to review their waiver policies at public hearings;
- Require renewal of waiver policies by January 1, 2003. Failure to renew waivers will automatically result in their expiration. The duration of waivers now may not exceed five years;
- Require the conduct of a public hearing prior to renewing waiver policies to determine whether the discharge for which the waiver policy was established should instead be subject to general or individual waste discharge requirements;
- Direct regional water boards to require compliance with the conditions pursuant to which waivers are granted;
- Require renewal of waivers every five years.

This Regional Water Board has issued numerous waivers of waste discharge requirements over the years.

### **Regional Water Board Regulatory Authority Waste Discharge Requirements**

Unless the requirement is waived by a regional water board, any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of waters of the state, other than into a community sewer system, shall file a report of waste discharge containing the information that may be required by the board. In general, the regional water board has 30 days to determine the adequacy of the report of waste discharge. Once the report of waste discharge is accepted as being complete, the regional water board has 120 days to adopt waste discharge requirements for the waste discharge. If waste discharge requirements are not adopted within the 120-day timeframe, the applicant may commence discharging waste but is not relieved from the responsibility of complying with board policies and plans which protect the beneficial uses of water and prohibit the creation of pollution or nuisance conditions. Waste discharge requirements must be adopted by a regional water board. The prescription of waste discharge requirements cannot be delegated to the board's executive officer<sup>1</sup>.

In prescribing waste discharge requirements, regional water boards make the determination, based on all available information, that the waste discharge could

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<sup>1</sup> The Regional Water Board may, however, adopt general waste discharge requirements, and the executive officer may enroll eligible applicants for coverage under a general set of waste discharge requirements.

adversely affect water quality and the beneficial uses of water if not specifically regulated and that waste discharge requirements are appropriate. Waste discharge requirements can include waste discharge prohibitions and specific effluent and receiving water limitations (narrative or numeric), monitoring requirements, and other conditions as necessary to protect water quality.

Waste discharge requirements are an effective regulatory tool. They provide the discharger, as well as regional water board staff, with specific water quality objectives, regulatory guidance and monitoring information, all of which are used to prevent or accurately document adverse water quality impacts. Waste discharge requirements violations can be directly enforced through the adoption of cease and desist orders, civil liability assessments, or other enforcement orders of the board.

### **Waivers of Waste Discharge Requirements**

A regional water board has the authority to waive the need for submitting a report of waste discharge or prescribing waste discharge requirements if it determines that such waivers are not against the public interest, and may also waive the fees associated with a report of waste discharge when a waiver is issued. Historically, waivers of waste discharge requirements have been issued by regional water boards in low impact cases where the threat to water quality is small or where regulation is provided by another governmental agency by mutual agreement between that agency and the regional water board. The authority to issue waivers may not be delegated to the board's executive officer. Regional Water Boards can, however, and often do, structure categorical waivers to make it clear that the executive officer can review a specific discharge activity and provide the discharger with a statement regarding whether a proposed activity is covered by a board-adopted categorical waiver. All of the state's regional water boards have adopted policies waiving waste discharge requirements for specific categories of waste discharge, and the staff have issued many statements of coverage under categorical waivers for eligible projects under these prior policies. In the past, waivers were generally issued with few conditions or limitations with which to directly track discharger compliance. However, regional water boards are authorized to terminate waivers at any time and take other regulatory or enforcement action including the prescription of waste discharge requirements, issuance of cleanup and abatement orders, or adoption of cease and desist orders.

### **Current Waiver Policies**

The Board's policies for issuing waivers for timber harvesting are contained in two types of documents, (1) the Water Quality Control Plan for the North Coast Region (Basin Plan) and (2) Resolution No. 87-113.

The Basin Plan Action Plan for Logging, Construction, and Associated Activities contains prohibitions crafted to provide appropriate protection to waters of the Region. In the great majority of cases the Action Plan allows the waiver of reports of waste discharge and waiver of waste discharge requirements. However, under the existing plan,

where investigations indicate that the beneficial uses of water may be adversely affected by waste discharges, staff shall require the submission of reports of waste discharge. The Action Plan provides a procedure for possible issuance of waste discharge requirements.

Regional Water Board Resolution No. 87-113 authorizes waivers of waste discharge requirements for timber harvesting operations when harvesting plans on State and private lands are approved by the State Department of Forestry and Fire Protection, and on public lands when timber sales are approved by the appropriate federal agency, provided that harvesting plans or timber sales comply with Basin Plan provisions.

Only the timber harvesting waiver category contained in Resolution No. 87-113 is being reviewed at this public hearing.

All testimony received in conjunction with this item regarding the timber harvesting waiver category will be used by the Board and its staff in its preparation of a proposed updated description and waiver conditions of the Timber Harvesting waiver category. A public hearing to consider adoption of such updated Timber Harvest waiver category will be conducted at a future date.

### **Considerations for Responding to Section 13269**

Staff have considered several key issues when developing initial options for the Regional Water Board to consider in addressing waivers of waste discharge requirements (WDRs) for timber harvesting. These key issues include:

- **How should the consideration of WDRs arise on projects where another agency is recognized as the management agency for water quality protection related to timber harvesting?** Staff recognizes that the California Department of Forestry (CDF) is the lead agency for issuing permits (approving a plan) related to timber harvesting on private lands. Just as with the current waiver policy, staff expects that the Regional Water Board would waive the need for an additional permit step of WDRs most of the time. Redundant permit actions should be avoided, however it is important to recognize that the Regional Water Board should continue to be the lead agency for protecting water quality in California, after first relying on CDF to appropriately eliminate water quality impacts and ensure compliance with the Basin Plan. Further, at some point, the US Environmental Protection Agency (USEPA) may certify the existing forest practices rules as Best Management Practices, and the conditional exemption provided for under Section 4514.3 becomes effective.
- **Should there be an established timeframe for processing waivers of waste discharge requirements?** The timeliness of processing waivers could reflect a similar timeframe to that of CDF, and keeping the timeframes similar could avoid unnecessary redundancy with the lead agency. CWC Section 13264 sets out 120 days as the maximum allotted time for issuance of WDRs (or waivers thereof),

except where California Environmental Quality Act requirements need to be satisfied.

- **Should there be a different waiver process for non-industrial timberland owners?** Not all timber activities on private lands occur on industrial timberlands, and some small operations may need to be addressed in a more streamlined process.
- **Should there be a fee required for processing of waivers?** Currently, no fees have been collected for waivers, except for non-categorical waivers issued by the Regional Water Board on a case-by-case basis, or for certifications and waivers issued to address Section 401 of the Clean Water Act. Fees for 401 certifications are based on the size of the area of disturbance in cubic yards, and range from \$500 to \$2,000 plus \$250 for each increment of 5,000 cubic yards in excess of 20,000 cubic yards. Waste discharges associated with a timber harvesting operation would likely fall into a category 2C (for non-solid waste sites), resulting in a fee of \$900.
- **Should there be additional noticing of Regional Water Board staff consideration of waiver issuance?** Currently, timber harvest plans require CDF to post notices for pending plans, and no additional noticing is provided by the Regional Water Board related to waivers. However, a noticing requirement could allow a mechanism for the public to seek formal Regional Water Board action regarding a specific waiver.
- **Should there be a mechanism for an agency to request issuance of WDRs?** Currently, only the Forest Practices Act sets out a possible role for the Board of Forestry in requesting WDRs. A mechanism may be needed whereby other agencies may request the Board to consider waste discharge requirements.

### **Regulatory Waiver Alternatives**

The following discussion sets out details regarding three potential options for addressing the waiver of waste discharge requirements.

#### **1. No Action Alternative:**

California Water Code Section 13269 now requires that waste discharge requirements waivers currently in effect be renewed by January 1, 2003, if they are to remain in effect. If no action is taken by the Regional Water Board to renew them, all regulatory waivers currently in effect, including waivers of waste discharge requirements for timber operations will expire on January 1, 2003. As waste discharges from timber operations could affect the quality of waters of the state, parties responsible for timber operations will be required to submit reports of waste discharge to the Regional Water Board and will be subject to the prescription of waste discharge requirements. The Regional Water

Board could still issue waivers, but only on a case by case basis and only after determining that the waiver would not be against the public interest. In the absence of waste discharge requirements or waivers, timber operations would be vulnerable to third party lawsuits and possible penalties should waste discharges occur in violation of the California Water Code.

If the Regional Water Board selects this option, then no further action is required.

## **2. Renewal of Current Waiver Policy:**

The Regional Water Board's current categorical waiver of waste discharge requirements for Timber Harvesting, as contained in Resolution No. 87-113, does not adequately address all timber harvesting activities nor does it describe waiver conditions in sufficient detail to ensure achievement of its stated objective of compliance with the Basin Plan.

The Regional Water Board's current categorical waivers of waste discharge requirements under the timber harvesting category are for timber harvest plans and federal forest timberland sales only. In addition to these activities, discharges and threatened discharges of waste related to timberlands in California occur during implementation of (a) non-industrial timberland management plans (NTMPs), (b) timberland conversions, (c) operations conducted under exemptions to the Forest Practices Act, and (d) emergencies recognized under the Forest Practices Act. None of these aforementioned activities are addressed by the existing waiver policy, and these activities have been conducted for several years without the benefit of either waste discharge requirements or waivers thereof. The ramifications of operating without a waiver or waste discharge requirements fall mostly to the owner/operator, and involve vulnerability to third party lawsuits and, under certain circumstances, possible penalties for discharging without a permit. This alternative would not address activities (a) through (d) above, and to that effect, does not ensure achievement of compliance with the Basin Plan.

Therefore, staff recommends that activities (a) through (d) above be added to the description of the categorical waiver for timber harvesting. A proposed waiver procedure for each activity is described in this staff report.

For further clarification, the term "Timber Harvesting" should be defined to include timber harvesting, road and landing construction and maintenance, site preparation, vegetation management, and harvesting incidental to restoration projects.

A public hearing is needed if the Regional Water Board selects this alternative.

## **3. Amendment of Current Waiver Policy:**

This alternative proposes an expanded description for timber harvesting activities and the inclusion of additional waiver conditions intended to assure compliance with all applicable provisions of the Basin Plan. Classes of activities are discussed as separate waiver processes, although the Regional Water Board could determine that all activities

should be handled identically. The various classes of timber operations are briefly described below. The waiver process described below (and laid out in Figure 1) for Timber Harvest Plans could be used for all CDF classes of timber operations, or the Regional Water Board could determine that separate waiver procedures are appropriate for specific classes of timber operations.

- Federal timber sales
- Timber Harvest Plans, and amendments to Timber Harvest Plans
- Non-industrial Timberland Management Plans
- Modified Timber Harvest Plans
- Program Timber Harvest Plans
- Timberland Conversions
- Exemptions
- Emergencies

#### A. Federal Timber Sales

Information provided in conjunction with federal timber sales is generally sufficient to determine whether compliance with applicable provisions of the Basin Plan will be achieved. The Regional Water Board staff would review the Environmental Assessments prepared by the US Forest Service to determine the need for waste discharge requirements. Except when determined that the Timber Sale will not protect water quality, the Regional Water Board staff will waive issuance of WDRs, provided that the conditions in Table 1 are satisfied.

#### B. Timber Harvest Plans and Amendments to Timber Harvest Plans

A Timber Harvest Plan is the primary plan used to make applications to harvest forest products on private and state owned lands in California. A THP is required when commercial timber harvest operations are proposed in excess of specific restrictions contained in the FPA, such as acreage constraints or land management activities. THPs are valid for three years with the potential for two one-year extensions.

There are two types of amendments of THPs as provided by the Forest Practices Rules. Minor deviations are changes to a THP which can reasonably be presumed not to make a significant change in the conduct of timber operations and not result in significant adverse affects on values relating to soil, water quality, watershed, wildlife, fisheries, range and forage, recreation and aesthetic enjoyment. Minor deviations are not processed through the Timber Harvest Plan Review Process. Substantial deviations are changes to a THP which are not a minor deviation and could have a substantial change to a THP and potentially could have significant adverse effects on values relating to soil, water quality, watershed, wildlife, fisheries, range and forage, recreation and aesthetic enjoyment. Substantial deviations are subject to the same Timber Harvest Plan Review Process as any THP.

The applicant for a waiver of waste discharge requirements would submit a copy of the timber harvest plan to the Regional Water Board along with other necessary information requested by Board staff to assess the project's potential impacts on water quality. The timber harvest plan (when accepted for filing by the California Department of Forestry and Fire Protection) and the information provided in response to the request by Regional Water Board staff, would constitute a complete report of waste discharge, unless the Executive Officer notifies the applicant that additional information is required.

As part of the Timber Harvest Plan Review Team process, Regional Water Board staff would review reports of waste discharge to determine the potential threats to water quality and whether the proposed timber operation will be able to comply with all applicable waiver conditions.

Within 120 days of submittal of a complete report of waste discharge, waste discharge requirements for timber harvest plans would be waived in accordance with the provisions of California Water Code Section 13269 when the conditions set out in Table 1 are met. Because concurrence with a plan is required for issuance of a waiver with Table 1 conditions, those plans where Regional Water Board staff do not concur could trigger Regional Water Board consideration of waste discharge requirements (or waiver thereof).

Regional Water Board staff would track and, where possible, inspect projects during active logging or post logging to determine compliance with waiver conditions.

If after reviewing the originally submitted report of waste discharge, Regional Water Board staff is unable to obtain sufficient information with which to evaluate the potential water quality impacts of the project or to ensure compliance with the above waiver conditions, staff would request the submittal of additional information and a filing fee under the provisions of California Water Code Section 13260, and would schedule the project for consideration of adoption of waste discharge requirements, or waiver thereof, by the Regional Water Board.

If waste discharge requirements are prescribed by the Regional Water Board, staff would schedule and conduct inspections as necessary and track compliance with requirements.

If Regional Water Board staff could not adequately review complete reports of waste discharge because of workload and resource limitations, staff would provide written notification to the parties responsible for the project stating that the project could not be timely reviewed and that no waste discharge should be initiated prior to the expiration of 120 days following the date of submission of the complete report of waste discharge (California Water Code Section 13264). Responsible parties would be notified that any discharge initiated after the 120-day period would have to comply with all applicable provisions of the Water Quality Control Plan for the North Coast Region.

Regional Water Board staff would track all projects for which complete reports of waste discharge could not be reviewed within the 120-day period specified in California Water Code Section 13264.

Figure 1 provides a flow chart of actions summarizing the steps discussed above.

#### C. Non-industrial Timber Management Plans (NTMPs):

An NTMP is a harvest plan developed by small (less than 2,500 acres of timberland) non-industrial (not associated with a specific mill) timberland owners. Specific land management practices such as use of uneven age silviculture and other harvesting restrictions are required under an NTMP. NTMPs are valid until the landowner requests that the plan approval be revoked by CDF.

NTMPs would be reviewed under the Timber Harvest Team Review process in the same manner as prescribed for timber harvest plans. The waiver conditions prescribed above for waivers of waste discharge requirements for timber harvest plans would also apply to waivers of waste discharge requirements for NTMPs. However, staff would need to periodically (every five years) review the NTMP to determine if the waiver should remain in effect.

#### D. Modified Timber Harvest Plans (MTHPs)

An MTHP is a streamlined harvest plan that is used for timberland ownerships of less than 100 acres when specific conditions and mitigation measures are met. The required contents of an MTHP are less extensive than those required under a THP or NTMP. MTHPs are valid for three years with the potential for two one-year extensions.

#### E. Program Timber Harvest Plan (PTHP)

A PTHP is a harvest plan that relies on a Program Timberland Environmental Impact Report for CEQA compliance.

#### F. Timberland Conversion

A Timberland Conversion is a process utilized by CDF in the conversion of timberland to a use other than the growing of timber. Conversion activities include vineyard expansion, rural subdivision, and construction or building sites (greater than 3 acres in size). Conversions include two permits, the THP and a conversion permit. CDF is the lead for both permits, and Regional Water Board staff have opportunities to review both permits.

#### G. Forest Practices Act Exemption Notices

Exemption Notices allow specific timber operations to be exempt from plan preparation and submission standards required under the Forest Practices Act. Exemption notices are reviewed by CDF to determine their completeness and accuracy (as opposed to a multi-agency approval process). Exemption notices are not limited in acreage and are valid for one year. A condition for waiver could include the applicant addressing the

recommendations put forth by the Regional Water Board staff in the 1999 Rule Modification Package, which was submitted to the Board of Forestry.

#### H. Forest Practices Act Emergency Notices

An Emergency Notice allows emergency timber operations to occur without the preparation and submittal standards required under the Forest Practices Act. Emergency notices are not limited in acreage and are valid for one year. Regional Water Board staff recommendations in the 1999 Forest Practice Rules Modification Package could also be conditions for issuance of waivers for these activities.

#### **Waiver Tracking and Compliance Program:**

Regional Water Board staff will develop and implement a waiver tracking program that includes applications for waivers (Reports of Waste Discharge or equivalent documents), notices of issuance of waivers, compliance inspection documentation, and any self monitoring reports submitted by waiver recipients.

Compliance inspections shall be conducted in accordance with a schedule to be developed by the Regional Water Board Executive Officer.

#### **Economic Considerations**

The Regional Water Board has expressed some interest in the question of when and where economic analyses are required for its decision-making. There are no sources of law that mandate an economic analysis in the adoption of a conditional waiver. The Regional Water Board is likely, however, to receive information from the public on this point, and would be free to give that information all due consideration. The Regional Water Board may wish to have staff provide an analysis of any information presented by the discharger community or community interest groups, or to seek out additional information, and could provide specific direction and time for staff to conduct such analysis.

#### **CEQA Considerations**

A categorical waiver of waste discharge requirements can only be adopted based on a determination by the Regional Water Board that the discharge resulting from the proposed activity is not against the public interest. In adopting a waiver policy, the Regional Water Board determines that the waiver, with its set of conditions, will not adversely impact the waters of the State. Thus, the issuance of a categorical waiver should result in a minimal impact on the environment. To that end, the Regional Water Board normally prepares and approves an Initial Study and a Negative Declaration as set forth in CEQA guidelines before it approves its policy on categorical waivers. If the Regional Water Board deems the discharge to have the potential to adversely impact water quality, the categorical waiver should not apply, and regulation by waste discharge requirements would be appropriate. Regulation by waste discharge requirements would trigger a separate CEQA analysis.

## **Summary and Conclusions**

In compliance with the provisions of amended CWC Section 13269, Regional Water Board staff has reviewed the existing categorical waiver of waste discharge requirements for timber harvesting and has concluded that it is appropriate to schedule a public hearing prior to January 1, 2003 to consider the adoption of an updated regulatory waiver policy for timber harvest operations.

### **PRELIMINARY**

**STAFF RECOMMENDATION:** Staff recommends that the Regional Water Board consider all public testimony, provide policy direction to staff, and schedule a public hearing to consider the adoption of a regulatory waiver policy for timber harvest operations.

Table 1. Proposed Conditions for Consideration of Issuance of a Waiver

1. The project shall operate under an approved Department of Forestry and Fire Protection timber harvest plan, NTMP, or Major Amendments thereto, conversions, exemptions and emergency notices, an approved federal timber sale, or the equivalent.
2. The applicant for a THP, NTMP, Major Amendment or Conversion shall provide information (Reports of Waste Discharge or equivalent documents) adequate for Regional Water Board staff to determine whether compliance with the provisions of the Basin Plan will be achieved.
3. The Regional Water Board staff shall concur with the plan as proposed (or modified), or shall inform the applicant that the plan is not being reviewed and advise the applicant of the applicability of California Water Code Section 13264.
4. The federal timber sale project shall utilize Best Management Practices as defined under the management Agency Agreement with the US Forest Service for the protection of water quality.
5. The THP, NTMP, Major Amendment or Conversion project shall analyze the cumulative watershed impacts of timber harvesting.
6. The project shall comply with all applicable provisions of the Basin Plan.
7. The project shall implement a monitoring and reporting program and an in stream monitoring program when directed by the Regional Water Board Executive Officer.
8. No local, state or federal agency has requested the Regional Water Board to consider issuance of waste discharge requirements.
9. No significant public controversy has arisen over the consideration of waivers of waste discharge requirements.
10. The discharge shall not create a pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code.
11. The discharge of any waste not specifically regulated by this waiver is prohibited.
12. The discharger shall allow Regional Water Board staff entry onto the affected property for the purpose of determining compliance with the waiver conditions.